

**When your child has been
permanently excluded.**

Guidance for parents

Step 2.

**Deciding whether to apply
for a review by an Independent
Review Panel (IRP)**



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Step 2. Deciding whether to apply for a review by an Independent Review Panel (IRP)

It is very disappointing to hear that the Governors have upheld the Headteacher's permanent exclusion decision especially if you have spent several hours preparing what to say and ask. The letter you received informing you that the Governors have decided to uphold the Headteacher's decision to exclude will tell you about your rights to apply for an Independent review of the Governors' decision and give you the address to send the request for a review to.

The review process is unfortunately not easy to understand but this guidance will help you. The law says you can apply on the grounds of 'illegality, procedural impropriety, and irrationality'. In other words, was it legal? was it fair and in line with the Government's guidance and School's Policies? and was it reasonable in the legal meaning i.e. irrational?

IMPORTANT: If you decide to apply for a review, it is important to be aware that the IRP looks at the Governors' decision to uphold the Head's decision to exclude, not the Head's original permanent exclusion decision.

Things to think about when deciding whether to apply for a review hearing:

Not being happy with the decision is not sufficient reason, you will need to be able to say why you think the decision was wrong using the information in this guidance.

Even if you do not want your child to return to the excluding School, you can still get the decision reviewed. You might however want to challenge the School for not adequately supporting your child or hope to have the exclusion removed from your child's record.

Remember you are challenging the Governors' decision and how they considered your case. Also, you need to know that the permanent exclusion cannot be removed from your child's record, but the outcome of the IRP will be added to it if they decide to quash the Governors' decision, i.e. say the Governors' decision was wrong.

What are the pros and cons?

It can be time-consuming and stressful to apply for a review so it is worth asking yourself why you want to challenge the exclusion and look at the pros and cons.

On the one hand – Pros:

- It is free to request and attend an IRP – even if you did not attend the Governors' Meeting.

- Rates of success at IRPs are higher than at the Governing Board Meetings but still not very high - nationally about 40% of IRPs uphold the parents' application although in Oxfordshire the success rate for parents is currently slightly higher.

IMPORTANT: If you want to request a SEN Expert, you must do it when you apply for your review. This service is at no cost to you! (see section about SEN expert later).

- You can request the attendance of a SEN expert to answer questions at the IRP which might help show that your child's SEND or unmet needs were a contributing factor to their exclusion.
- The 3 IRP members will have received the legal training required by the law every 2 years whereas Governors are not required to have any training on the relevant law and Government guidance.

On the other hand – Cons:

- The IRP does not have the power to make the School readmit the child or young person, so that decision will still be for the Governors to take. The Governors do not have to readmit the child to the School even if the decision is 'quashed' i.e. the Governors' decision overturned.
- The IRP cannot remove the exclusion from a child's record. It happened so it's part of your child's record but it would be updated to show the IRP's decision.
- The members of the IRP, while having received the legal training, are not usually experts in the law and the quality of the reviews may vary. However, they have the services of a Clerk - also required to receive the same training – who advises the IRP on law and procedure.

Things to help you decide whether there is a case for applying for a review.

The Governors' Meeting

- Did you receive the case papers in time for you to be able to go through the paperwork?
- Did you have the same paperwork as the Governors and Head?
- Do you feel/know any/all of the Governors were biased against you?
- Were you able to say everything that you wanted to?
- Do you feel you were fairly listened to?
- If what was being said wasn't accurate, were you able to correct it?
- Did you get the impression the Governors understood that your child had SEND which might have led to the incident(s)?

- How much did they focus on what was best for your child rather than for the School, the staff, the other pupils?
- Did any of the Governors give their views in their Meeting?

The decision letter and the Minutes of Governors' Meeting

Read the decision letter carefully- is it clear why they reached the decision they did?

Did it explain what the Governors took into account? What they based their decision on? If the Governors did not fully take into account your child's SEND and/or their best interests, this is a very good reason to apply for a review.

The Governors must keep Minutes of the Meeting. They are required to make a copy available on request without delay.

The Minutes and the decision letter are the two documents which will help you decide whether to request a review and provide the basis for your application for review. So, in order to decide whether you want to apply and what your reasons are for doing so, you need to request the paperwork from the School, particularly the Minutes of Meeting and of decision-making process.

IMPORTANT: Unfortunately, some Schools do not provide the Minutes until after the deadline for you to apply for a review (and sometimes only provided in the case papers). Therefore, when you send in your request for a review, you should state at the end of your reasons for the application that: "I reserve the right to add to my reasons".

The Minutes are not always a comprehensive record of everything that was said. Once you have received them, read them carefully and highlight any discrepancies between the Minutes and the notes you took or what you remember. If you think the differences are important, make corrections and contact the clerk from the Governing Board's Meeting to ask them to amend and update the Minutes.

Do you have reasons to apply for a review?

It is important to know that the IRP will consider your case and test the Governors' decision on the following basis:

- 1) **Illegality** – did the Head and /or Governors act outside of their legal powers in taking the decision to exclude?
- 2) **Procedural impropriety** – was the process of exclusion and the Governors' consideration of the exclusion so unfair or flawed that justice was clearly not done?
- 3) **Irrationality** – was the Governors' decision so unreasonable that it was not one a sensible person could have made? i.e was it based on the evidence rather than personal feelings? Did the Governors take into account all the relevant factors or did they ignore relevant information?

1) Illegality

Was it legal, in line with the DfE guidance? (preparing a case based on illegality)

- Who excluded your child? Only the Head can exclude or the Acting Head in the Head's absence.

Example: where the School has more than one site and the Assistant/Deputy Head in charge of that site excluded even though the actual Head was available that day.

- Was the exclusion unlawful?

It is unlawful to exclude for a **non-disciplinary** reason such as:

your child has additional needs or a disability which the School said it could not meet

your child was excluded for: academic attainment/ability; your actions; your child failed to meet specific conditions before they are reinstated (para13 DfE Guidance)

2) Procedural impropriety (preparing a case on things not being done properly)

The DfE Guidance explains that: "Procedural impropriety means not simply a breach of minor points of procedure but something more substantive, that has a significant impact on the quality of the decision-making process". (Paragraph 160)

This can come under four main headings:

- (i) Was there bias?
- (ii) Did the Governors make sure their Meeting was fair, including making the arrangements for it?
- (iii) Did the Governors take into account the DfE Guidance on Exclusions, the SEND Code, other relevant DfE guidance plus their own School's Policies which are relevant to the case?
- (iv) Did the Governors give reasons for their decision?

(i) Was there bias?

The test: The decision maker (the Governors) must have no personal interest in the outcome of your case.

So, answer the following questions:

- Did one (or more) of the Governors who heard your case have a child in the same class as your child?
- Were any of the Governors' own children involved in the incident for which your child was excluded?
- Does one (or more) of the Governors know you and your child personally?
- Have any of them ever said negative things about your child?
- Have any of them ever dealt with your child previously and decided against them e.g. earlier involvement after a Fixed Term exclusion?

(ii) Was it a fair process and/or Meeting?

Fair process at the Governing Board Meeting is essential. The law says that procedural fairness is an important principle in legal processes and, even if the decision might be technically correct, if the process taken to get there is flawed then the Governors' decision should not be upheld by the IRP.

Fairness can also be understood in a common-sense way. It covers all aspects of the procedure for organising and running a Governors' Meeting to consider Head's decision to exclude.

Also, Paragraph 61 of the 2017 Exclusions Guidance makes it clear that the Governors should not discuss the exclusion with any person outside of the Meeting.

If the Headteacher and School staff were already present in the room at the start of the Meeting or they remain behind when you were asked to leave, you could argue that this was most unfair as you cannot be sure what they were talking about and whether the staff were trying to talk about your case without you present. It's important to know justice must not just be done, but be seen to be done.

Read the Minutes of the Governors' Meeting carefully and use your own notes and what you remember. Then answer the following questions:

- Was the Governors' Meeting arranged or run in a way that was unfair to you and/or your child or young person?
- Were you allowed to bring a friend or representative?
- Were you given sufficient notice of the Meeting so you could prepare?
- Did you ask that they arrange the Meeting at a different time or date? Was it agreed? If not, why not?
- Did you get the paperwork that was being considered in enough time to read and understand it and send in anything you wanted to be included in the 'bundle' (bundle is the legal term for the pack of papers)
- Was the Meeting arranged with ample time to cover all the issues, and were you given the same opportunity to ask your questions and make your case as the School staff were given to speak and present their case to the Governors?
- Did the Governors and the School speak about, or appear to speak about, the exclusion without you being present?

When considering an exclusion, it is not the Governors' role to take a view on the exclusion before the Meeting or to be an advocate for the School. It is not their place to discipline the young person for what they are accused of having done. Doing any of these things may make you feel less able to make your case and expose a bias in favour of the Headteacher and School staff. So:

- Were there any indications from comments made by the Governors during the Meeting that they had already made their mind up about their decision?

- Did the Governors undermine their impartiality by appearing to side with the School or acting in a hostile manner towards you or your supporter?

This might be hard to prove but the Governors answering for the Headteacher or defending them or making you feel hurried by asking how many more questions or how much longer you might take, you could point to as evidence.

Consider the letter confirming the Governors' decision, and any record of the Governors' Meeting including the Minutes and your own notes. In particular, the Minutes could help prove what was said by Governors.

IMPORTANT: If any of the above apply, you must include them in your grounds for application for review i.e. you think that the Governors' Meeting was not conducted fairly because.... and state which ones apply in your case.

- (iii) Did the Governors take into account the relevant DfE Guidance (Exclusion and SEND and others which might be relevant like Use of Force) and the School's own relevant Policies?

The DfE Guidance on Exclusions sets out what everyone involved in the exclusion process must or should do, including the Head and Governors (and the IRP and SEN Expert). This is a very important document.

So the following questions are important:

- Did the Head and Governors use the most up to date DfE Guidance?
- Did the Head and Governors use the School's Policies that were in force at the time they made their decisions e.g. had the Governing Board actually agreed the Policies used in the exclusion process?
- Had your child been given an opportunity to give their version of events before they were excluded?
- Were there witness statements? Were they dated and signed?

IMPORTANT: If witness statements were anonymised, the School must explain why. They cannot just say because of Data Protection or they have been told to do that. It is important that anyone accused of something knows what they are accused of and who is accusing them!

- To what extent have the Governors taken into account their duties under the Equality Act 2010? i.e. did they make sure your child was not disadvantaged or treated less favourably because of their disability? In other words, might your child's behaviour be due to the disability they have. E.g. ADHD or ASC?
- Do the School's Policies discriminate against pupils protected by that Act by unfairly increasing their risk of exclusion? e.g. it is a blanket policy about following the School's behaviour code rather than acknowledging that children with some types of difficulties might have difficulty understanding and offers alternative ways to help them understand what the rules are.

- What evidence is there that the Governors considered the best interests and circumstances of your child?
- Had the Governors checked that there were any extenuating circumstances or mitigating factors? E.g. there had been a bereavement; or your child had been bullied; or forced to do what they have been excluded for?
- Had the Governors questioned to what extent the Head had explored alternatives to exclusion?

If your child has SEND (Special Educational Needs or Disabilities)

IMPORTANT: The DfE Guidance states: "The head teacher should, as far as possible, avoid permanently excluding any pupil with an EHC plan..." (Paragraph 23)

- Did the Governors have evidence about your child's SEND and what the School did to support him/her?
- Was there evidence that the School had put in place any strategies recommended by e.g. Educational Psychologist, SENSS, CAMHS?
- Did the Governors find out if the Head had given enough time to see if new strategies to support your child worked?
- If your child has an EHCP, had the Governors checked that an Emergency Annual Review had been carried out before excluding your child?

(iv) Did the Governors give reasons for their decision?

Did the decision letter explain/include the following:

- Whether or not they were satisfied your child had done what they had been accused of and when
- Where you dispute the evidence, what evidence they took into account and why they did not give more importance to other evidence/witness statements
- Which parts of DfE Guidance and School Policies they referred to
- How they took into account any extenuating/mitigating circumstances
- What they decided regarding SEN provision for your child

N.B. Were the facts they relied on correct e.g. they might have misheard or misunderstood some information in their Meeting and decision making

So, if any of the above (i) to (iv) apply in your case you can include them in your application for review under the heading "Procedural Impropriety".

3) Was the Governors' decision unreasonable (in the legal meaning)? (how to present a case based on 'irrationality' of the Governors' decision)

- Were the Governors' decisions and conclusions logical and based on all the relevant information?

- Was their decision based on correct information?

Points to consider:

Did the Governors take into account things they shouldn't have?

The Governing Board should not factor irrelevant information into their decision making. If irrelevant information came to their attention during the hearing, they should disregard it and ensure it does not factor into their decision making.

For example: Kyle is permanently excluded. When the headteacher is telling the Governors why he excluded Kyle he adds that they were frustrated about the lack of support from Kyle's mum and how she bombarded the head with emails and spoke aggressively to the staff. There is no power to exclude based on the parent's behaviour and so the Governors should simply disregard this information. If the Governors in their decision letter make any reference to the pressure placed on School by mum's behaviour, it may well mean that the resulting decision is unreasonable.

Consider the letter confirming the Governors' decision, and any record of the Governors' Meeting including the Minutes and your own notes. Then answer the questions:

Overall, did the Governors consider irrelevant information when coming to their decision to uphold the exclusion as follows:

- Did they make assumptions i.e. not based on the evidence?
- Did they make their decision based on information they did not have in the Meeting?
- Did they make a decision based on incorrect information?
- Did they make their decision too quickly?

If so, you can include in your reasons for applying for a review that you think the Governors considered irrelevant information in their decision making and therefore it was an unreasonable decision.

Did the Governors consider all the factors which they ought to have considered?

The Governors should take all relevant information into account before reaching a decision. That can be the information shared with them or information that they should reasonably be expected to obtain in the hearing **even if this means adjourning the Meeting to a different time/day**. This might include asking the Headteacher to provide evidence of a child's support or termly review or pastoral support plan that weren't included in the bundle of papers for the Governors' Meeting. If they don't consider the information, again the decision may have been unreasonable

E.g. You might feel that the School had not given your child adequate support which had led to incidents included in the School's reasons for the permanent exclusion. The Headteacher claimed at the Governors' Meeting that a lot of support was given to your child but you made points about there being no evidence in the bundle to support what the headteacher was saying. The Governors should have asked the Headteacher to provide the paperwork for them to include in their decision making.

Consider the letter confirming the Governors' decision, and any record of the Governors' Meeting including the Minutes and your own notes.

So, did the Governors fail to consider relevant information when deciding to uphold the exclusion i.e. did they ignore any significant information and/or facts in your case?

If so, you can include in your grounds for appeal that you think the Governors did not consider relevant information in their decision making and therefore it was an unreasonable decision.

Was the decision to exclude so unreasonable that no reasonable board of Governors would have made it?

Or, to put it another way:

- Was the Governors' decision illogical when looking at the facts of the case?
- Was the decision perverse in view of the facts i.e. does it go against the grain?
- Was the decision proportionate? In plain English we might ask 'did the punishment fit the crime'? In other words, does the impact of exclusion on the young person outweigh the seriousness of the misbehaviour. Was there a lesser punishment that was available that was more appropriate?

You should also consider whether the benefit to the School community is small whilst the impact of the permanent exclusion of the child is obviously significant, then you could argue the exclusion was disproportionate and the Governors should not have upheld it.

If the decision of the Governors was made having considered the right information but does not follow logically from the information available then it may be considered unreasonable i.e. irrational.

With these points in mind, look at the Governors' decision letter and the Minutes of the Governors' Meeting then answer the question:

Was the Governors' decision, or were any of their findings, unreasonable i.e. the legal meaning of unreasonable - perverse/irrational?

Requesting a SEN Expert

Families may request, at the time they ask for an IRP, that a SEN expert attend. A SEN expert must be engaged to attend at the expense of the Local Authority or the School if it is an academy. In Oxfordshire most secondary Schools are academies so they can arrange their own IRP though many still use the Local Authority's (LA) Independent Review Panels.

IMPORTANT: You can request a SEN expert even if the School doesn't think your child has SEN. You must request the SEN Expert at the time you apply for the review or you lose that right!

Having a SEN expert at the IRP Meeting can be helpful in certain circumstances.

SEN experts can answer questions from you, the IRP panel members and the School representatives at the IRP hearing. They cannot say what they think the School should

have done in the circumstances. They look at the School's Policies and whether they, and how they were followed, may have contributed to the permanent exclusion.

If your child has not been identified by the School as having SEN, the SEN Expert should advise the IRP on whether they believe the School acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEN that your child may potentially have, and any contribution that this could have made to the circumstances of the exclusion.

IMPORTANT: The SEN Expert's role does not include making an assessment of your child's special educational needs.

A SEN expert must be someone who has expertise and experience of SEN. They may be an Educational Psychologist or a SENCO from another School. They must however be independent. The guidance says that the LA or academy trust who are responsible for appointing the SEN expert should take reasonable steps to ensure that you as parent have confidence in the impartiality and capability of the SEN expert.

If you think the SEN expert may not be independent because of their relationship to the excluding School (or indeed yourselves) e.g. they are employed at another School in the same Academy Trust, you should notify the clerk to the IRP who must inform the Academy/LA who make the final decision on who is appointed.

Things to consider when requesting a SEN expert

For

- The expert may be able to answer your questions and point out whether the School's Policies and how they applied them played a part in your child's permanent exclusion
- They may help the panel understand that the School's Policies put your child at a disadvantage because of their SEN.
- The experts are free for parents to request.

Against

- What the SEN expert is allowed to comment on is limited.
- You won't know whether what the expert says will support your points.
- Sometimes when the SEN expert is another SENCO in the same authority they might seem to support the School's reasons for not providing adequate SEN support based on their own experience in the local authority rather than the law

IMPORTANT: If you request a SEN Expert and they do not attend the IRP hearing, you have the right to request that the IRP adjourns the hearing.

Time scale for requesting an IRP

Requesting an IRP must be done within **15 School days*** of you receiving written notice of the Governors' decision to uphold the exclusion. In fact, it must be **received** by the relevant person by the 15th School day. It is helpful to be aware that the 15 School days is calculated slightly differently depending on how the decision is shared i.e. by letter in post or via an email. In most cases it will be useful to ensure the request is **received** within 15 School days of the date on the letter itself, to avoid the possibility that the time limit may be accidentally missed as you lose your right to an IRP hearing if a request is made outside of this time limit.

How to apply: a sample letter is included in the pack as Appendix to Step 2

Write to the address or e-mail given in the decision letter.

If having read the leaflet, you are not sure about applying for a review, you could ring SENDIASS Oxfordshire on 01865 810516 to talk things through.

If you have decided to apply for a review, go to Step 3.

***COVID RELATED MODIFICATION TO TIME SCALES OR PROCESS**

Some aspects of the process have been temporarily adapted during the Covid pandemic of 2020.

The deadline for applications for an independent review in relation to exclusions occurring between 1 June 2020 and 24 March 2021 (this date may be extended) will be 25 School days from the date on which notice in writing of the governing board's decision is given to parents, or directly to the pupil if they are 18 or above.

Appendix to Step 2: Application Letter For Review

We have suggested some of the sorts of things you might want to include in your own letter. You will be able to identify which reasons to choose from those you feel apply in your case when you have read through the leaflet. So in each section remember that you need to choose one or more of the reasons and give some more details.

Sample Letter

NAME

ADDRESS

Tel.

Application for Review by Independent Review Panel of Exclusion of

NAME OF CHILD (Y??) from NAME of SCHOOL/ACADEMY

IMPORTANT TO INCLUDE:

I request that the (CHOOSE: Local Authority/Academy) appoints a SEN Expert to attend the hearing.

The reasons for my application to review the Governing Board's decision are:

Some examples to choose from and include in your letter:

- The Acting/Head teacher did not exclude my child. The (person who did) does not have the power to do that.
- My child was excluded because they failed to meet the conditions for reinstatement after a Fixed Term exclusion. They did not break the School's Behaviour Policy.
- One (or more) of the Governors was biased against me/my child/our family because ...
- The Governors' Meeting was not fair because ... *e.g.*
 1. I was not given much notice of when the Meeting would take place.
 2. I was not told I could bring a friend/representative.
 3. I only got the papers a couple of days before and did not have time.
 4. I asked for another date but it was refused.
 5. I was cut off before I could finish saying what I wanted to.
 6. The Head/staff were with the Governors before/during/after the Meeting when I was not there.
 7. I could not ask all the questions I wanted to.
 8. **Anything else you are not happy with/do not think was fair?**
- The Governors' decision letter and their reasons:
 1. I disagreed that my child had done what they were excluded for and the letter does not say why the Governors decided my child had done what s/he was accused of.
 2. They have not said why they think the School has done everything properly. The Governors are supposed to check the Head had done everything properly.
 3. They have not listened to what I had to say about ... (include your own, *e.g.* a change in family circumstances) as there is no mention of it in the letter.
 4. They have not mentioned my child's Special Educational Needs or Disability.
- The Governors and/or Head have not used the right DfE Guidance or the School's own Behaviour/SEN Drugs/Bullying Policy that they should have used when making their decision on my child's exclusion. It/they were (**Choose: either** out of date **OR** not in force) at the time my child was excluded.

- The Governors did not find out how the statements were taken or why they were not dated and signed.
- They have not done anything about the statements being anonymous which made it hard for me to deal with the accusations against my child.
- The Governors did not make any comment about there being no witness statement from my child.
- They did not mention/investigate why my child did what they has been accused of e.g. they had been bullied/was forced to do it/there are problems in the family at the moment.
- The Head said they had looked at other things rather than exclude my child but did not do certain things because **the Head could have:**
 1. Given my child a Fixed Term exclusion instead
 2. Contacted: (*choose any of the following that are relevant*)
 - the Oxfordshire School Inclusion Team for advice
 - SEN Support Service
 - Educational Psychologist
 - Locality Community Support Services
 - the Behaviour and Attendance Hot line
 - me as the parent to get me involved earlier on
 3. **EITHER** Started the Education Health Care Needs assessment (EHCNa)
OR
 4. As my child has an EHCP, hold an Emergency Annual Review
 5. Suggested I asked our GP to refer to Child Adolescent Mental Health Service (CAMHS)
 6. Updated their pupil profile, or Individual Behaviour Plan (IBP), or Pastoral Support Programme (PSP)
 7. Ensure the School had given enough time for the suggested advice from (*quote who gave advice eg Educational Psychologist or other Service*) to be put in place and tried and tested
 8. Arranged a Managed Move, rather than Permanently Exclude
 9. **Any other thing you may think/know of**
- The Governors based their decision on information that was not available in the hearing, which is both wrong and unfair
- Their decision was made far too quickly. The Meeting took ?? hours but someone told me their decision shortly after the Meeting had ended so I am worried that they rushed it.
- The Head's decision to exclude was too severe a punishment for what my child did and the Governors should have realised that.
- The Governors did not refer to my child's interests as they are supposed to do. So they have not taken into account all the important information they are meant to when they decided on this exclusion which I understand is something they really had to do in their decision making.

I reserve the right to add to my grounds of application for a review.

Your NAME
 EMAIL
 ADDRESS
 DATE

Sendiass Oxfordshire can offer all year round:

- A telephone helpline, 9.30-2.30 weekdays with answerphone outside these hours:
01865 810516
- Information, advice and support on matters to do with a young person's SEND
- Help with communication between you, the School and the Local Authority
- Trained volunteer Independent Parental Supporters and Independent Supporters
- Advice about preventing and resolving disagreements
- Training events for parents and groups – see SENDIASS website
- An informal Drop In SEN Advice session, 'Talking Points', – see website for dates:
<https://sendiass-oxfordshire.org.uk/>

**Contact us on: 01865 810516 or
text 07786 524294
sendiass@oxfordshire.gov.uk
<https://sendiass-oxfordshire.org.uk/>**

Confidentiality Code:

Everything you tell us will be treated in strict confidence. We will not disclose our records to, or discuss the case with, a third party outside SENDIASS Oxfordshire without your consent, except if we suspect a child is at risk.